S.B.Civil Misc. Appeal No.263/93.
Union of India vs. United Insurance Co. Ltd. & ors.

Date of Order: 07.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Rajesh Joshi for the appellant.
Mr. Sanjeev Johri for respondent no.1

Heard learned counsel for the parties.

The appellant Union of India is aggrieved against the order passed by the Railway Claims Tribunal, Jaipur Bench dated 24.3.1993.

The facts of the case reveal that 100 bales of goods were sent from the Railway Station, Sri Ganganagar vide R.R. No.083472, 083473 and 083474 on 4.1.1988 to Coimbatore. At the destination station, all the three consignments were found in damaged condition due to fire, heat and water. The damage was got assessed by the railway authorities and a joint survey report on 5.5.1988 was prepared. The applicant no.2 M/s Agarwal Trading Company preferred claim petition with the Insurance Company after getting damages surveyed by another surveyor Shri Ratan Asawa. In joint survey report conducted by the railway authorities, on 5.5.1988, the loss was assessed at the rate of 5% for all above 100 bales, whereas in survey which was got conducted by applicant no.2, surveyor Ratan Asawa assessed the damage to the extent of Rs.1,34,740/- which is 37.34% of total quantity. It appears that the Insurance Company since was liable to pay the insured amount,

therefore, after making payment to the claimant, after joining M/s Agarwal Trading Company, submitted a claim before the Railway Tribunal against the Union of India for the recovery of Rs.1,03,155/- due to loss caused to the goods while they were in transit from Sri Ganganagar to Coimbatore and were in the hands of the department of the Railway of the Union of India. The Railway Claims Tribunal gave preference to the survey conducted by the railway administration which is a joint survey report in preference to privately conducted survey by said Shri Ratan Asawa. The Railway Claims Tribunal observed that the said survey report is an independent report of a independent person who was Assistant Director of Agriculture and no body raised objection against the survey report at the relevant time. It is also observed that as per rule 19 of the Principal Rules and procedure for the preferment and Disposal of Claims on Railways, the survey report is required to be admitted. Ultimately, the Railway Claims Tribunal allowed the petition and passed the order against the Union of India awarding compensation of Rs.16,505/- along with pendente lite interest @ 12% per annum on Rs.15,680/-.

Still the Union of India being aggrieved against the order of the Railway Claims Tribunal dated 29.3.1993, preferred this appeal.

It is submitted that the claim petition was barred by time and the Railway Claims Tribunal committed error of law in condoning the

delay. The objection about the territorial jurisdiction has also been raised by the appellant in the appeal and it was also submitted that the Tribunal committed error of law by proceeding under assumption that no written reply was filed by the railway administration whereas in fact written statement along with enquiry report and affidavit were filed by the railway administration. It is also submitted that the loss was not caused due to any negligent act of any of the employees of the railway administration.

The learned counsel appearing on behalf of respondent no.1 supported the order of the Railway Claims Tribunal.

I considered the submissions of the learned counsel for the parties and perused the record as well as the facts of the case. So far as booking of the goods by the consignee on 4.1.1988 and those goods were found damaged is not in dispute. The joint survey report was got conducted by the railway authorities themselves and in that the damage was assessed. The Railway Claims Tribunal relied upon the said independent and trustworthy report in awarding the compensation to the applicant. The applicant submitted his own survey report, obtained through another expert Ratan Asawa but that was not accepted by the Railway Claims Tribunal. When the railway administration itself admitted that the goods were booked by the railway administration and were found damaged at the destination and there is loss to the

consignee/consignor, then the railway administration should not have raised such question of limitation and territorial jurisdiction because the Union of India and the railway administration are not ordinary litigants, who can take benefit of such pleas in such type of disputes where the railway administration has no right to keep the money of their customers/consumers/public. I do not find that the Railway Claims Tribunal has committed any error of fact or law or even has committed any error of law in entertaining the claim petition. Admittedly, goods were booked from the Rajasthan and the claim petition was entertained by the claims tribunal situated and established covering the area where the goods were books.

In view of the above, I do not find any merit in this appeal and the same is hereby dismissed.

(**PRAKASH TATIA),J.**

mlt.